

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000388-001 DT

11/24/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

CMH-MOUNTAIN GATE MHP

GUY P WOLF

v.

DEAN PANETTA (001)

DEAN W O'CONNOR

PHX JUSTICE CT-SOUTH
REMAND DESK-LCA-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on September 29, 2003, and the Court has considered and reviewed the record of the proceedings from the South Phoenix Justice Court, exhibits made of record, and the memoranda submitted.

Appellant, CMH-Mountain Gate MHP, filed a forcible detainer action on January 30, 2001 in the South Phoenix Justice Court. The Court's file reflects that Appellee, Dean Panetta, was served by Process Server, Scott South on January 31, 2001 when South found no one home at Panetta's residence, he posted a copy of the Summons and Complaint on the door and mailed one copy by certified mail to Panetta. Panetta failed to appear at the time scheduled for trial on February 6, 2001, and a default judgment was issued in the amount of \$671.00, plus interest in Appellant's favor. Thereafter, on October 15, 2002, Panetta submitted a letter to the South Phoenix Justice Court requesting that the court "withdraw from this judgment". The court treated this motion as a Motion to Vacate Judgment pursuant to Rule 60(c), Arizona Rules of Civil Procedure. The trial judge granted Appellee's Motion to Withdraw Judgment on December 16, 2002. Appellant has filed a timely Notice of Appeal from that order.

Appellant's central issue is whether the lower court erred in granting a motion to vacate judgment, where no Rule 60¹ basis was alleged and no explanation for delay was given.

¹ Rule 60(c) Ariz. Rules of Civil Procedure.
Docket Code 512

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Appellant correctly argues that a court may relieve a party from judgment for any of the five reasons set forth in clauses (1) through (5) of Rule 60(c).² Rule 60(c) provides in pertinent part:

Mistake; inadvertence; surprise; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(d); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Appellee's claim in his original letter to the court, and later amplified in his reply to Appellee's objection to the Motion to Withdraw Judgment, fails to make a claim of a meritorious defense that would warrant setting aside the default judgment. Appellee claimed that a bankruptcy stay (issued in October or 2002) precluded the exercise of jurisdiction by the trial court in this case. Appellee contends that its judgment is void, as a matter of law. However, the Appellee is misinformed as the U.S. Bankruptcy Court precludes only actions "to collect, assess, or recover a claim against the debtor (Appellee) that arose before the commencement of the case under this title (the bankruptcy action)."³ The issues in the forcible detainer case before the trial court involved rent accruing after the issuance of the bankruptcy stay order. Thus, as a matter of law, Appellee had no meritorious defense by virtue of his bankruptcy stay. In the absence of a showing of a meritorious defense, a motion to set aside a default judgment must be denied.⁴ The trial court erred in granting this motion.

Additionally, Rule 60(c) also provides that a Rule 60(c) (1), (2), or (3) motion must be filed "not more than six months after the judgment or order was entered or proceeding was taken," and that all other Rule 60(c) motions "shall be filed within a reasonable time...."⁵ It is clear from the record that Appellee were served with a copy of the judgment approximately twenty months before he filed his motion to vacate the judgment. Regardless of which clause under Rule 60(c) Appellee sought relief, he did not do so within the time limits of the rule, or within a reasonable time.

² *Gorman v. City of Phoenix*, 152 Ariz. 179, 181, 731 P.2d 74, 76 (1987).

³ See 11 U.S.C. Section 362(a).

⁴ *Prell v. Amado*, 2 Ariz. App. 35, 406 P.2d 237 (1965).

⁵ Rule 60(c) Ariz. Rules of Civil Procedure.

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This Court having determined that the trial court erred as a matter of law in granting Appellee's Motion to Vacate (Withdraw Judgment),

IT IS THEREFORE ORDERED reversing and vacating the trial court's order of December 16, 2002 vacating its previous judgment of February 6, 2001.

IT IS FURTHER ORDERED reinstating the judgment of February 6, 2001 of the South Phoenix Justice Court in full force and effect.

IT IS FURTHER ORDERED directing counsel for Appellant to lodge an order consistent with this minute entry opinion and its application for attorneys' fees and costs no later than December 17, 2003.

IT IS FURTHER ORDERED remanding this case back to the South Phoenix Justice Court for all further and future proceedings, with the exception of attorneys' fees and costs incurred on appeal.